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IN THE SUPREME COURT OF THE UNITED STATES
October Term, 1984
No. 84-221 (2)

ROBERT E. HENSHAW and SHELEEN HENSHAW, his wife; DEAN R. SPIRO and VIRGINIA M. SPIRO, his wife; ROBERT C. CUCHERAN and NOLA CUCHERAN, his wife; RICHARD D. STAMM and CAROL A. STAMM, his wife; ROLF O. YOUNG and ALYCE M. YOUNG, his wife; EARL G. SMITH, JR., and FLORENCE M. SMITH, his wife,
Appellants,

-v-

STATE TAX COMMISSION OF THE STATE OF MICHIGAN; THE COUNTY OF MACOMB; THE TOWNSHIP OF SHELBY and THE CITY OF STERLING HEIGHTS,
Appellees.

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ON APPEAL FROM THE MICHIGAN
COURT OF APPEALS
MOTION TO DISMISS OR TO AFFIRM

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IN THE SUPREME COURT OF THE UNITED STATES
October Term, 1984
No. 84-221

ROBERT E. HENSHAW and SHELEEN HENSHAW, his wife; DEAN R. SPIRO and VIRGINIA M. SPIRO, his wife; ROBERT C. CUCHERAN and NOLA CUCHERAN, his wife; RICHARD D. STAMM and CAROL A. STAMM, his wife; ROLF O. YOUNG and ALYCE M. YOUNG, his wife; EARL G. SMITH, JR., and FLORENCE M. SMITH, his wife,
Appellants,

-v-

STATE TAX COMMISSION OF THE STATE OF MICHIGAN; THE COUNTY OF MACOMB; THE TOWNSHIP OF SHELBY and THE CITY OF STERLING HEIGHTS,
Appellees.

ON APPEAL FROM THE MICHIGAN COURT OF APPEALS

MOTION TO DISMISS OR TO AFFIRM

Pursuant to Rule 16 of the Revised Rules of the Supreme Court of the United States, appellees move that appellants' appeal from the opinion and judgment of the Michigan Court of Appeals (JS 1B-13B),[1] issued on July 6, 1983, and from an order of the Michigan Supreme Court denying leave to appeal, filed on May 7, 1984 (JS 1A-3A), be dismissed.

Or, in the alternative, the judgments of the State courts be affirmed for want of a substantial federal question and because the questions on which the decision of this cause depends are so unsubstantial as to need no further argument.

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[1] Unless otherwise indicated, numbers in parentheses preceded by JS, will refer to pages of appellants' jurisdictional statement; numbers in parentheses preceded by JS but followed by letters of the alphabet will refer to pages in the appendices to appellants' jurisdictional statement.

OPINIONS BELOW

The opinions of the Michigan Court of Appeals, and references thereto, are set forth correctly by the appellants (JS 1B-13B; 1E-8E).

JURISDICTION

Appellants seek to invoke the jurisdiction of this Court under 28 USCA §1257 (2). For the reasons indicated herein, the appeal should be dismissed or the judgment should be affirmed.

QUESTION PRESENTED

No proper or substantial federal question is presented. The sole issue is:

> Does the right to due process of law guarantee to each individual owner of taxable property an opportunity for individual and direct participation in state equalization proceedings?
>
> > The statutory scheme which makes the counties of the state the representatives of the proprietary interests of all of their constituent taxpayers complies with the due process clause and the guarantee to due process does not contemplate or suggest the impossible requirement of direct participation by millions of taxpayers in the processes of state equalization.

STATUTES INVOLVED

The statutes involved, being Michigan's State Board of Equalization Act and Section 86 of the Executive Organization Act, are correctly set forth by appellants (JS 1L-9L; 1M).

STATEMENT OF THE CASE

Appellee accepts appellants' statement of the case. The factual background to the instant litigation is summarized in the syllabus of *Brittany Park Apartments* v *Harrison Township*, 104 Mich App 81, 304 NW 2d 488 (1981):

> ". . . In May 1975, the State Board of Equalization increased the state equalization factor for Macomb County from 1.0 to 1.28254. Macomb County proceeded to levy taxes based upon the tentative equalization factor of 1.0 while seeking review of the state equalization. The parties paid their 1975 taxes as spread on the basis of an equalization factor of 1.0. On October 8, 1976, the Tax Tribunal dismissed Macomb County's appeal and thereby affirmed the state equalization factor. The Macomb County Board of Commissioners, acting pursuant to MCL 211.39a; MSA 7.80(1), determined not to levy any additional taxes for 1975. A number of school districts within the county brought an action in Macomb Circuit Court seeking to compel the levy of the additional taxes for 1975. On May 17, 1978, the Macomb Circuit Court ordered Harrison Township, as statutory agent for the school districts located therein, to levy additional school taxes for 1975 in accordance with the state equalized value. In July, 1978, the township sent out an additional tax bill to all taxpayers. . . ."

ARGUMENT

MICHIGAN'S PROPERTY TAX SYSTEM

The annual exaction, known as Michigan's general property tax[2] is based upon an annual assessment by township and city assessors. There are in excess of 1500 such assessing districts.

The taxable status of property and its value are to be fixed as of December 31st of each year,[3] but the assessing officer is not restricted to any particular period in the preparation of his assessment roll. However, that roll must be completed prior to "the Tuesday next following the first Monday in March",[4] when it is submitted to a township or city board of review. Owners aggrieved by the assessment of their property may appear before the board of review and the board is authorized to change assessments of property upon petition by taxpayers or on its own motion. After completion of the review by the board, an endorsement is entered upon the assessment roll designating it as the assessment roll of said township (or city) for the year in which it has been prepared and approved by the board of review.[5]

The review of assessments in all cities and townships must be completed "on or before the first Monday in April."[6]

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[2] 1893 PA 206, as amended, MCLA 211.1 et seq; MSA 7.1 et seq.

[3] 1893 PA 206 §2, as amended, MCLA 211.2; MSA 7.2.

[4] 1893 PA 206 §29, as amended, MCLA 211.29; MSA 7.29.

[5] 1893 PA 206 §30, as amended, MCLA 211.30; MSA 7.30.

[6] 1949 PA 285, MCLA 211.30a; MSA 7.30(1).

The board of commissioners of each county, at its April session in each year[7] examines the assessment rolls of the several townships and cities which comprise the county.

> ". . . If, on the examination, the county board of commissioners considers the assessments to be relatively unequal, it shall equalize the assessments by adding to or deducting from the valuation of the taxable property in a township or city an amount which in the judgment of the county board of commissioners will produce a sum which represents the true cash value of that property . . ."

The county board is assisted in its task by a department to survey assessments, commonly referred to as a County Equalization Department.

The equalization of the several townships and cities within the county by the board of county commissioners, commonly called "county equalization", may be appealed to the Michigan Tax Tribunal, which is the final authority in the administration of the property tax laws. The Tribunal may decide "that the determination and equalization made by the county board of commissioners is correct", in which case "further action shall not be taken." If the State Tax Tribunal, after investigation and hearing, determines that the valuations of the county were improperly equalized, ". . . it shall proceed to make deductions from, or additions to, the valuation of the respective townships, cities, or school districts as may be considered proper . . ."[8]

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[7]
1893 PA 206 §34, as amended, MCLA 211.34; MSA 7.52.

[8]
1893 PA 206 §34, as amended, MCLA 211.34; MSA 7.52.

The determinations of the State Tax Tribunal concerning valuation or allocation are final "in the absence of fraud, error of law or the adoption of wrong principles . . ."[9]

County equalization is designed to maximize uniformity of assessments between assessing units of the county and its results are transmitted to the State Tax Commission on or before the first Monday in May.[10] The Commission which acts as a State Board of Equalization,[11] after hearings, establishes the "state equalized value" of every county

> ". . . by adding to or deducting from the applicable valuations in a county such amounts as well produce a sum which represents the proportion of true cash value established by the legislature . . ."[12]

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[9]

Michigan Constitution of 1963, Art 6 §28.

[10]

1911 PA 44 §5, as amended, MCLA 209.5; MSA 7.605; (JS 6L).

[11]

Statutory references to the State Board of Equalization must be read to refer to the State Tax Commission. The Executive Organization Act of 1965, § 86, MCLA 16.186; MSA 3.29(86); (JS 1M) abolished the State Board of Equalization and reposed its functions and duties in the State Tax Commission.

[12]

1911 PA 44 §4, as amended, MCLA 209.4; MSA 7.604; (JS 5L). The statutory direction for fixing state equalized value at a legislatively established proportion of true cash value has reference to 1893 PA 206 §27a, MCLA 211.27a; MSA 7.27(1) which provides that ". . . property shall be assessed at 50% of its true cash value pursuant to Section 3 of Article 9 of the state constitution of 1963." Article 9, Section 3 authorizes the legislature to provide for the determination of true cash value of property and ". . . the proportion of true cash value at which such property shall be uniformly addressed, which shall not, after January 1, 1966, exceed 50 percent."

The foregoing processes of assessment, review and two-stage equalization at the county and state levels fix the final property tax base upon which authorized millages are levied. The state equalized value of any parcel of real property or item of taxable personal property is determined by spreading back a proportionate share of the adjustment, if any, made to the local assessed value by the processes of equalization.

Prior to the year 1827 there existed no property taxation in the territory of Michigan, except for taxes levied by cities and villages pursuant to specific charter powers. In 1827, a territorial law established township government[13] and in a companion measure, empowered it to levy ad valorem taxes upon real and personal property.[14] This latter Act contained a provision for intra-county equalization by the commissioners of each county.

The Revised Statutes of 1838, which streamlined and updated relevant territorial laws, adaptable to the newly created State of Michigan, continued the provisions for ad valorem taxation under Title V denominated "Of the assessment and collection of taxes."

County equalization had then, as it has now, as its basic purpose, the establishment of a county-wide uniform level of assessment. The goal of State equalization is the establish-

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[13]

An Act to divide the several counties in this territory into townships and for other purposes. Territorial Laws, Michigan, Volume II, pg 477 et seq, approved April 12, 1827.

[14]

An Act to provide for assessment of county and township taxes. Territorial Laws, Michigan, Volume II, pg 609 et seq, approved April 13, 1827.

ment of state-wide uniformity of assessment level.[15] That uniform level or standard was true cash value, a synonym for "usual selling price" or "market value" until January 1, 1964, the effective date of Michigan's 1963 Constitution. Since January 1, 1964,[16] that standard has been 50% of true cash value.

Townships and cities have remained as the primary assessing districts in the State of Michigan. The assessment rolls of more than 1500 assessing districts are equalized annually at their April session by 83 county boards of commissioners. The counties, as thusly equalized, are subjected to equalization *inter se* by the State Tax Commission during May of each year.

Michigan townships and cities employ assessors who must annually determine the true cash value of all taxable property within their respective township or city[17] and enter 50% of such value upon the assessment roll. Cities and townships also employ treasurers who multiply assessments by the au-

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[15]

If all county boards equalized cities and townships at the identical standard of cash value or some percentage thereof, state equalization would be redundant. Yet, throughout history, some county boards equalized these local units within their counties at cash value while other boards equalized at various fractions thereof. Such divergence, in the absence of intercounty equalization by a state board, would have resulted in a malapportionment of a state property tax which was levied until the 1930's as well as the taxes levied for intercounty taxing districts. To prevent such malapportionment, the delegates to the 1850 Constitutional Convention approved Art XIV §13, which mandated equalization of the counties by a state board.

The constitutional obligation was implemented by 1851 PA 106, which is the original progenitor of 1911 PA 44, as amended, (JS 1L-9L), the presently effective act providing for state equalization.

[16]

Michigan Constitution 1963, Art 9 §3 as implemented by 1965 PA 409.

[17]

1893 PA 206 §10, MCLA 211.10; MSA 7.10.

thorized millage rate, thereby producing the sum of tax which is billed to the owners of taxable property.[18] The tax may be paid within approximately two and one-half months after its billing, without addition of any interest or penalty.

Cities, townships, counties, school districts, community college districts, (junior colleges), airport, transportation or other charter authorities and metropolitan districts are authorized to levy property tax and to share in property tax proceeds. City and township assessors and treasurers are the agents of such tax-levying authorities in the assessment and collection of taxes.

APPELLANTS DO NOT PRESENT A SUBSTANTIAL FEDERAL QUESTION

There are more than three million descriptions of taxable property on the tax rolls of over 1500 assessing districts in Michigan. The appellants postulate that each owner of these three million descriptions of property must be personally notified of the state equalization proceedings and its results; and that each owner must be granted an opportunity to participate in these proceedings. Mere statement of the proposition refutes it. State equalization, a process which is constitutionally demanded, Mich Constitution 1963, Art 9 §3, in order to achieve equality of tax burden, would become impossible.

School districts, community college districts, airport and other tax-levying authorities often embody territory and property in several assessing districts and in two or more counties. To assure ad valorem property taxation in proportion to taxable wealth, it is necessary to equalize cities, townships and counties. In other words, uniformity of taxation is premised

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[18] 1893 PA 206 §44, MCLA 211.44; MSA 7.87.

upon existence of an identical standard and level of assessment throughout the State of Michigan. Without such equalization, property owners would be exposed to disproportionate tax burdens. Assessors and elected county commissioners could secure an advantage for their constituent taxpayers by assessing property at less than the statutorily mandated 50% of true cash value.[19]

If County A assesses at 50% and County B at 40% of true cash value, taxes paid to an intercounty school district, intercounty charter authority, metropolitan district, etc.—absent state equalization—would constitute different burdens upon identical property values in the two different counties. Taxpayers in County B would be preferred by 20%.

In *Cooper Township* v *State Tax Commission*, 393 Mich 58, 70; 222 NW 2d 900 (1974), the Michigan Supreme Court stated:

> "The Township, as the representative for equalization purposes of all the taxpayers within its boundaries, has a valid and recognizable interest in assuring that its residents are not taxed at an unfair rate. Likewise, the county board of commissioners, as representatives of the entire county, have a duty to equalize the assessments throughout the county so that all taxpayers pay a proportionately fair share of the cost of government."

The opinion herein of the Michigan Court of Appeals similarly notes (JS 8B, 9B):

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[19]

Such underassessment will reduce the amount of taxes levied by all local authorities, including city and township taxes. Thus, underassessment is only feasible in townships and cities with considerable wealth. Cities and townships which are in need of maximum tax proceeds cannot tolerate underassessment.

> "In equalization proceedings, the county represents the taxpayers of the entire county. Thus, . . . the county represented plaintiffs' interests in the instant intercounty equalization proceedings."

As acknowledged by the appellants (JS 8-10), the county of their residence, Macomb County, as representative of the appellants and other constituent taxpayers, vigorously contested state equalization before the Michigan Tax Tribunal and sought leave to appeal to the Michigan Court of Appeals and the Michigan Supreme Court. Finally, county officials declined to collect the additional 14.6% of property taxes resulting from state equalization until forced to do so by order of the Macomb County Circuit Court.

Under such circumstances, the appellants' argument that Macomb County failed to represent them adequately because of adverse interest, sounds hollow.

State equalization is necessary, as noted, to assure uniformity of taxation and equal treatment of taxpayers. All property taxes, whether levied by cities, townships, school districts, counties, etc., are computed upon state equalized values. Such values result from the process of equalization in which all ad valorem taxpayers are interested. However, because of their immense number, their direct participation in the equalization proceedings is an impossibility. By necessity, their interests must be guarded by representatives.

This Court has recognized that it is impossible to grant all taxpayers an opportunity to be heard in state equalization proceedings. In *Bi-Metallic Investment Co* v *State Board of Equalization*, 239 US 441, 445; 60 L Ed 372, 375 (1915), Mr. Justice Holmes stated:

> "The question, then, is whether all individuals have a constitutional right to be heard before a matter can be decided in which all are equally concerned,—here, for instance, before a superior board decides that the local taxing officers have adopted a system of undervaluation throughout a county, as notoriously often has been the case. The answer of this court in the State R. Tax Cases, 92 U.S. 575, 23 L Ed 663, at least, as to any further notice, was that it was hard to believe that the proposition was seriously made.
>
> "Where a rule of conduct applies to more than a few people, it is impracticable that everyone should have a direct voice in its adoption. The Constitution does not require all public acts to be done in town meeting or an assembly of the whole. General statutes within the state power are passed that affect the person or property of individuals, sometimes to the point of ruin, without giving them a chance to be heard. Their rights are protected in the only way that they can be in a complex society, by their power, immediate or remote, over those who make the rule . . . There must be a limit to individual argument in such matters if government is to go on . . ."

In the case at bar, the Michigan Court of Appeals stated (JS 10B):

> "We hold that individual taxpayers are not denied due process of law in the state intercounty equalization proceedings. Whether elected officials adequately represent their constituents is not a question for this or any court."

Yet, there is an additional and dispositive response to appellants' contention that they were denied the opportunity to contest imposition of state equalization adjustments. As noted by the Michigan Court of Appeals (JS 9B), individual tax-

payers were entitled to contest the state equalized value of their property before the Michigan Tax Tribunal. *Brittany Park Apartments* v *Harrison Township*, 104 Mich App 81; 304 NW 2d 488 (1981), dispositively held that Macomb County taxpayers had a right to be heard in the Tax Tribunal upon the question of whether their state equalized assessments exceeded the constitutional limit of 50% of true cash value.

Unlike the owners of Brittany Park Apartments, the appellants did not seek review of their individual assessments after the imposition of state equalization adjustments. Instead, the appellants, on their own behalf, and purportedly on behalf of all Macomb County taxpayers, sought a refund of additional taxes billed in July, 1978, and a declaratory ruling that the statutory state equalization procedures are constitutionally defective.

The appellants' contention that they had no opportunity to be heard in protest of the 14.6% increase of Macomb County's property tax base is consequently a half-truth. Admittedly, the appellants were not given the opportunity of a hearing before the State Board of Equalization. Their county of residence acted as their representative. However, pursuant to *Brittany Park Apartments, supra*, they had the right to a hearing before the Michigan Tax Tribunal upon the question whether imposition of the state equalization adjustments increased the assessment of their property beyond the constitutionally mandated 50% of true cash value. Such right to a hearing completely negates the proposition that state equalization procedures are an invalid encroachment upon the due process rights of property taxpayers.

THE "FINALITY RULE" DOES NOT CONTRAVENE THE CONSTITUTIONAL GUARANTEE OF DUE PROCESS OF LAW

Although not fashioned in precise language, the appellants suggest that the Constitution requires a guaranteed right for judicial review of state equalization results. (JS 46, 47)

Chicago, Burlington & Quincy Railway Co v *F C Babcock, et al,* 204 US 585; 51 L Ed 636; 27 S Ct 326 (1907), involved the valuation of an interstate railway company which was assessed by the Nebraska State Board of Equalization and Assessment. The opinion of Mr. Justice Holmes upheld the value judgment of the Nebraska Board. In the concluding paragraph of the opinion, after referring to the board, he stated:

> "Within its jurisdiction, except, as we have said, in the case of fraud or a clearly shown adoption of wrong principles, it is the ultimate guardian of certain rights. The state has confided those rights to its protection and has trusted to its honor and capacity as it confides the protection of other social relations to the courts of law. Somewhere there must be an end."

The Michigan Supreme Court adopted the proposition so clearly stated by Mr. Justice Holmes and consistently announced that it would refrain from reviewing the value judgment of the State Tax Commission, "in the absence of fraud, error of law or the adoption of wrong principles . . ." *Newport Mining Co* v *City of Ironwood,* 185 Mich 668; 152 NW 1088 (1915), *Sloman-Polk Co* v *Detroit,* 261 Mich 689; 247 NW 95 (1933), *S S Kresge Co* v *City of Detroit,* 276 Mich 565; 268 NW 740 (1936), *Hudson Motor Car Co* v *Detroit,* 282 Mich 69; 275 NW 770 (1937), *Twenty-Two Charlotte, Inc* v *Detroit,*

294 Mich 275; 293 NW 647 (1940), *Moran* v *Grosse Pointe Twp*, 317 Mich 248; 26 NW 2d 763 (1947), *Refining Co* v *Muskegon Twp*, 346 Mich 16; 77 NW 2d 255 (1956), *Kingsford Chemical Co* v *Kingsford*, 347 Mich 91; 78 NW 2d 587 (1956).

This case is governed by the "finality rule" which has been embodied into the Michigan Constitution of 1963 as the second paragraph of Art 6, §28, which states:

> "In the absence of fraud, error of law or the adoption of wrong principles, no appeal may be taken to any court from any final agency provided for the administration of property tax laws from any decision relating to valuation or allocation."

The cases of *Saginaw County* v *State Tax Commission*, 54 Mich App 160; 220 NW 2d 706 (1974), *aff'd* 397 Mich 550; 244 NW 2d 909 (1976) and *Emmet County* v *State Tax Commission*, 397 Mich 550; 244 NW 2d 909 (1976), indicate that the courts will respect the decisions of the State Board of Equalization. As stated by the Court of Appeals in *Saginaw County* v *State Tax Commission*, *supra* at 54 Mich App 170:

> ". . . our review is limited to questions of fraud, error of law or adoption of wrong principles. The annual task of ascertaining 'whether the relative valuation between the several counties is equal and uniform', like the intermediate steps of local assessment and county-wide equalization, necessarily involves resolution of conflicting factual claims. Where reasonable minds could differ as to the facts, we have neither the expertise nor the authority to intervene."

The limited scope of judicial review of state equalization proceedings, mandated by Michigan's constitutional finality

rule, does not result in a denial of due process. This proposition is especially true, because property taxpayers have a right to review by the Tax Tribunal of state equalization adjustments to the assessments of their property. *Brittany Park Apartments, supra.* If they can show that the Tribunal decision was tainted by fraud, error of law or the adoption of wrong principles, they have the right to judicial review in the Michigan Court of Appeals and upon leave granted, by the Michigan Supreme Court.

SUMMATION

The appellants have sought to invoke alleged due process rights in support of their quest for direct participation in state equalization proceedings. They have alleged that their county of residence, their representative in state equalization proceedings, did not adequately guard their interests and that because of adverse interest, the county's representation was insufficient to guarantee them the due process of law.

Assuming *arguendo* that elected county officials did chance exposure to the power of the ballot box by sham rather than vigorous representation of their constituent taxpayers, the appellants have suffered no irreparable harm. Individually, they had the right to review, after state equalization, the adjustments to their assessments resulting therefrom. *Brittany Park Apartments, supra.* Appellants did not choose to assert that right.

Instead, the appellants have sought to destroy an indispensable link in the administrative chain of property taxation. They have mounted a frontal assault upon state equalization, which is mandated by Art 9 §3 of the Michigan Constitution and which promotes and fulfills the guarantees of uniform

taxation and equal treatment of property taxpayers. They have argued that the due process guarantee of the federal constitution requires participation by millions of taxpayers in the equalization proceedings.

The availability to appellants of a hearing and decision by the Michigan Tax Tribunal upon the state equalization additions to their individual assessments safeguards the constitutional due process rights of the appellants. Due process of law does not require that state law provide multiple remedies. It only requires that aggrieved taxpayers be given one effective remedy. Michigan law provides such remedy. *Brittany Park Apartments, supra.* Its efficacy is not diminished by difficulties encountered in establishing that state equalization additions have increased an assessment beyond the constitutionally limited 50% of true cash value.

Since appellants were properly represented by county officials during state equalization proceedings, and since any lack of representation was remediable by contesting state equalization additions to individual assessments before the Michigan Tax Tribunal, the appellants cannot raise a federal question. Their argument is devoid of substance, and the judgments of the Michigan courts are conclusive.

RELIEF

WHEREFORE, it is respectfully submitted, for the reasons herein stated, that this Honorable Court should dismiss the appeal or affirm the judgment of the Michigan Court of Appeals.

Respectfully submitted,

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